

*Minutes*

**DAGSBORO TOWN COUNCIL**

**Bethel Center – 28307 Clayton Street**

**Monday, September 18, 2017**

POLICE PRESENTATION – Prior to the start of the meeting, Police Chief Floyd Toomey and Staff Sergeant Litten presented Patrolman First Class Tyler Bare with a Silver Star for Bravery for his actions in the line of duty earlier in the summer.

**I. CALL MEETING TO ORDER**

6:00 p.m.

Meeting was called to order by Mayor Brian Baull at 6:04 p.m.

In attendance were: Mayor Brian Baull, Councilman William Chandler, Councilman Patrick Miller, Councilwoman Theresa Ulrich, Town Administrator Cynthia Brought, Engineer Kyle Gulbranson, Police Chief Floyd Toomey, and Attorney Rob Witsil. Vice-Mayor Norwood Truitt was absent. See attached sign in sheet for other members of the audience.

**II. PUBLIC COMMENT**

Dina Mach, President of The Woodlands at Pepper's Creek Condominium Association spoke to inform the Town Council that she saw Fernmoor Homes has begun to rent out the new units that they are building. This has taken herself and the other homeowners by surprise and they are concerned that this will decrease the value of their homes. It could also make it more difficult for them to sell their homes because of the percentage of ownership of one individual owner of multiple homes in a community. She also stated that they were never led to believe they would be living in a rental community, but thought it would be an owner-occupied community. They would like to know if the Town Council can do anything to help. They believe that the Town Council was also led to believe that the community would be an owner-occupied community. According to their homeowner association document, anyone wanting to rent their home should notify the association within ten days of signing a lease agreement. When a homeowner responded to Fernmoor's rental ad to inquire about the rentals, they were told that two rentals have been leased, effective October 1<sup>st</sup>. Mrs. Mach also states that their community is now displayed as a rental community on the builder's website.

They have been in contact with the local council representative of the Deputy Attorney General who is responsible for the Condo and HOA law. They might have some issues regarding Consumer Protection Violations that they would need to follow up on if they can't make any progress through the town. They also have been contact with their attorney and will be meeting with her.

Mrs. Mach also questions if this changes the make-up of their community to a commercial enterprise because the developer is renting out such a large block of units.

Mrs. Mach thanked the Town Council for helping to get their street top-coated because it is so much better.

Bob Flowers of New Street commented on the agenda. He feels that the fire department takes care of the town and this is the chance for the town to help them a little. He also feels the Village on Pepper Creek is at an ideal place to put that kind of development. It would help our water flow out at that end of town, which is needed. He also feels it would not inconvenience the main traffic flow in town because they have access to all of the backroads and Frankford from that location.

Carol Thompson from The Woodlands condo association with Mrs. Mach asked the Town Council when they might hear their thoughts on Fernmoor's rentals. Mayor Baull replied that they can certainly discuss the issue, but cannot say for sure if there will be an answer tonight or at the next meeting. Attorney Witsil replied that he has not been able to research the issue or form a legal opinion for the Town Council yet.

Mayor Baull informed those present that Chief Toomey has spent a lot of time on the police unification proposal and the two meetings last week and expressed his appreciation to Chief Toomey for those efforts. Mayor Baull also expressed appreciation to Bob Flowers for his time and effort to make the signs at Town Hall and on the highway look nice.

### III. APPROVAL OF MINUTES

#### A. July 17, 2017 – Town Council Minutes

Chief Toomey noted that on page three in the minutes state "retired state trooper" and the word "retired" should not be there.

Councilman Chandler made a motion to approve the minutes with that change. Councilwoman Ulrich seconded the motion. All in favor.

### IV. CONSENT AGENDA

#### A. Police Department Report

Chief Toomey informed those that were not able to be at the police unification meetings that the community seems largely in favor of the unification, but the main hold up appears to be the financial part for the Town of Frankford. Mayor Baull was able to be at the meetings and agrees with that statement.

#### B. Treasurer's Report

#### C. Administrative Report

Town Administrator Brought pointed out some of her questions in her report, including how they would like her to handle the rental license for Fernmoor. Attorney Witsil stated that he has not done extensive research into this, but that the code does not prohibit the rental of residential real estate by anyone, except by someone who does not have a rental license. There is no prohibition in the code against a developer desiring to not sell units and either create a new entity within the corporate entity or to rent the units out under the builder's corporate entity as it is now, as a purchaser would buy a unit and lease it out. He has not looked at the site plan or the restrictions to see if there are any restrictive covenants. The only possible prohibition against rentals that would make sense to him would be in the builder's own restrictive covenants that they have prepared and filed. He has not reviewed those and thinks that

would have been mentioned, but cannot make any decisions on his assumptions. He would like time to review the facts.

Councilman Chandler stated that there are no occupancy limits placed on developments and residential units that he is aware of. Attorney Witsil confirmed that there are not in the town code. Councilman Chandler asked if this would be an issue for the Fire Marshall. Attorney Witsil replied that just for discussion purposes, he doesn't see how the Fire Marshall regulations would be any different for a developer leased unit than an owner purchased and then leased unit. Councilman Chandler clarified that he meant if there is a limitation on how many people can occupy a dwelling, whether it is rented by the homeowner or by a developer, it would be through the Fire Marshall, not through the town. Attorney Witsil agreed that would be the Fire Marshall. Councilman Chandler then stated that unless there is some restrictive covenant in the condominium association documents, then the regulation probably does not exist. This would make it hard for the town to enforce anything because it is not prohibited in any of the town ordinances. He stated that there have been cases where the Department of Justice has found that a Deceptive Trade Practices Act claim can be made with respect to the sale of real estate or condo units. He suggested that The Woodlands association may want to have their attorneys research that. He also suggested the Consumer Fraud Act could have options. He expressed his own, personal sympathy to the homeowners because there is a big difference between an owner-managed rental property and another person managing a rental property. Smyrna had a similar issue, which involved the Board of Adjustment. The builder sought the "special use" exception from the Board of Adjustment, but it was later overturned on appeal. He suggested the attorney for The Woodlands association explore that avenue, along with The Fairway Village in Ocean View case.

Attorney Witsil stated that restrictive covenants often have a clause that states, "the property is for residential use only." There is very little case law out on this and he has researched this for homeowner association clients himself, but there is very little law that states that short-term rentals equate to commercial use of property when there is a restrictive covenant that states "residential use only." He stated this is a very difficult area, but that there certainly are not any ordinances that the Town of Dagsboro can enforce. Councilman Chandler clarified that there are no ordinances they can enforce other than if a person decides to have a rental, they must have a license to do that and they must pay the gross receipts tax. He also would assume that the developer would need to contribute dues to the homeowner's association, just like every other property owner in the community. Attorney Witsil confirmed that they certainly would. Mrs. Mach replied that their documents are vague, but she spoke with a board member at Fairway Village and he stated that is how it should work. However, Fernmoor has made no contact with them.

A resident, who did not state their name, asked when Fernmoor came before the Town Council with their original plans, if the rentals aren't against what the council was led to believe originally – that it was going to be homeownership and not rental properties. Attorney Witsil stated that he is reluctant to make any opinions based on hearsay and what people have heard; he would be happy to look at any documents or facts that they may have that they submit to the Town Administrator. Mayor Baull confirmed with Mrs. Mach that she will bring in any documents for Attorney Witsil to review and he would have more insight at October's meeting.

Moving on to the rest of the Administrator's Report, Town Administrator Brought asked the Council for permission for her to set up a meeting with Attorney Witsil to discuss the violations, condemned

properties, and those that need condemned in town. Town Council members were in agreement with her setting up this meeting.

- D. Economic Development Committee
- E. Building Official Report
- F. Code Enforcement Report
- G. Meeting Reports
- H. Water Department Report
- I. Prince George's Chapel Cemetery Report
- J. Correspondence

Motion to approve the consent agenda was made by Councilman Chandler and seconded by Councilman Miller. All in favor.

#### V. PLANNING & ZONING COMMITTEE

- A. Report from September 14, 2017 Meeting
  - a. Pat & Dana Miller – Coffee Shop & Café – Change of Use
  - b. Village on Pepper Creek Preliminary Site Plan Review

Cathy Flowers, Co-Chairperson for the Planning and Zoning Commission informed the Town Council that the commission approved everything at their meeting.

#### VI. NEW BUSINESS

- A. Consideration of Change of Use Application – Pat & Dana Miller

Mr. Gulbranson informed the Council that Pat and Dana Miller came forward with an application for a Change of Use for the old Healthy Habits building. They would like to convert it into a coffee shop and café and have gone through all of the agencies that need to approve the conditional use. When the Planning and Zoning Commission met last Thursday, they unanimously voted to recommend approval of the Change of Use. The Millers have the majority of their approvals and are just awaiting the letter of no objection from Del-Dot. According to the town's requirements, they have met all of the things they need to do and are just awaiting a motion to approve from the Town Council.

Councilman Chandler made a motion to approve the Change of Use application for Pat and Dana Miller for the coffee shop and café. Councilwoman Ulrich seconded the motion. All in favor. (Councilman Miller abstained from the vote.)

- B. Consideration of Preliminary Site Plan Approval – Village on Pepper Creek

Attorney Witsil stated that a preliminary sub-division plan requires a Public Hearing pursuant to Section 384 of the Town Code.

Hal Dukes, one of the property owners was present to represent the project. He informed the council that the project has come up three times and Del-Dot has given them until November before they sunset the project again. The plans have not changed and they are hoping for a public hearing as soon as possible.

Councilman Chandler also noted that the Planning and Zoning Commission is entertaining applications even though they have not been filed in the time manner that the rules state they should be. The rules of the Planning and Zoning Commission call for applications to be submitted by the 15<sup>th</sup> of the month before the meeting of the Planning and Zoning Commission. In this case, the application was submitted on the 8<sup>th</sup> and Planning and Zoning met on the 14<sup>th</sup>. If plans are submitted by the 15<sup>th</sup> of the month before, then Planning and Zoning meets early in the month, it gives the Town Council plenty of time to review the plans and recommendations. Mr. Gulbranson informed the council that at the last Planning and Zoning meeting, they changed the meetings to the first Thursday of the month so there will be more time for the Town Council to review submissions.

Councilman Chandler made a motion to hold a Public Hearing for October 23<sup>rd</sup> for the preliminary site plan approval for the Village on Pepper Creek. Councilwoman Ulrich seconded the motion. All in favor.

C. Charles Moon Plumbing – Jerry Green – Discuss Business Concerns

Jerry Green was not present at the meeting.

D. Buck Smith/Dagsboro Volunteer Fire Department

Buck Smith is a tax attorney to represent the Dagsboro Volunteer Fire Department. He came before the Town Council approximately nine years ago with a similar request, but it was a different council then. Mr. Smith explained that if the fire department wants to purchase equipment, other than an ambulance, they start by going to the bank and asking for a loan. The bank would be willing, but will charge a percentage. However, if the loan could be constructed in a way that the interest is tax free or tax deferred to the bank, then the bank will charge a lower rate of interest to the fire department, which helps them to save money when purchasing equipment. In order to do this, the governmental unit in the area must say that even though they are not loaning the money or issuing the bond, they do approve of it. The full faith and credit of the town is not at risk. In 1982, the IRS passed a tax law requiring a public hearing and the governmental unit must approve the bond issued by the bank (Fulton Bank in this case), for the benefit of the town, so the loan can be tax-free. The fire department is requesting a public hearing next month to approve the bond issued by Fulton Bank, on behalf of the town. Mr. Smith also has a written opinion from his law firm verifying that this does not in any way expose the town and a letter from Fulton Bank stating that they will not hold the town liable for the loan.

Mr. Smith stated the fire department must continue to promise to provide firefighting services the town of Dagsboro. There is already a letter from 2009 stating this promise, but he and Attorney Witsil will be working to fine tune that letter in the interim.

Councilman Chandler made a motion to place the public hearing for the resolution for the fire department on the agenda for the October 23<sup>rd</sup> meeting. Councilman Miller seconded the motion. All in favor.

Attorney Witsil informed the council that the ordinance has already been prepared and is ready to move forward with advertising for the public hearing.

E. Consideration of A RESOLUTION PROPOSING THAT A PUBLIC HEARING BE HELD ON OCTOBER 23, 2017 AT 6:00 P.M., AT THE BETHEL CENTER, 28307 CLAYTON STREET, DAGSBORO, DELAWARE, TO CONSIDER THE REQUEST OF THE DAGSBORO VOLUNTEER FIRE DEPARTMENT, INC. TO

APPROVE A PRIVATE ACTIVITY BOND ISSUED IN AN AMOUNT NOT TO EXCEED \$600,000.00 FOR PURCHASE OF A 2018 SUTPHEN ENGINE PUMPER FIRE TRUCK, 1,000 GALLON CAPACITY WITH PRE-CONNECTED HALE 2,000 GPM PUMP AND PRE-CONNECTED FOAM CONCENTRATE PUMP AND CONFIRMATION OF CONTINUATION OF PROVISION FOR FIRE PROTECTION SERVICES TO THE TOWN BY THE FIRE DEPARTMENT

This was covered under section "D" above.

F. Tax Appeals for Shady Creek Lane, The Woodlands – Dina Mach

Dina Mach made an appeal at the Court of Appeals earlier this month for her tax assessment. Eric Piner had gone to her home and re-assessed her property. She stated that the tax assessments usually go by measurements on the outside of the home and assume the second story is complete living space, but their homes have a large cathedral ceiling so it is not all completed living space. All of the homes in their community are similar so Mrs. Mach asked the Town Council if each individual home owner needs to appeal their assessments next year or the town can just instruct Eric Piner (the town tax assessor) to re-evaluate the homes. Attorney Witsil stated that Mrs. Mach cannot appeal on behalf of the other property owners, but that if they have plans that show the square footage is different from that assessed, the owners can submit those to the Town Administrator and she will pass the information on and request consideration from the town assessor for next year. Because there was not an appeal for this year, the town cannot retroactively accept an appeal and reassess. Mrs. Mach replied that nobody knows what the square footage is that they are being assessed at, as she didn't know until she met with Mr. Piner. Attorney Witsil replied that is why they would need to submit the actual floor plan that they have and then Mr. Piner can check to see if it contradicts the information he has.

G. Consideration of Proposal for New Computers at Town Hall

Town Administrator Brought informed the Town Council that Vice-Mayor Truitt was the one in contact with Tiger Direct to get the quote for the computers. One monitor needs to be replaced because it fades in and out and is blurry and Solutions Plus already looked at it and it still does it. The other quotes are for just the computer itself.

Councilwoman Ulrich stated that she works with Solutions Plus and he usually would recommend every year to replace a computer. She is okay with the computer prices, but thinks the monitor price seems high. Town Administrator Brought stated that we can get some other prices for the monitor, but made the council aware that the computer with the taxes and the water software does not even have a working fan on it any longer. Councilwoman asked if that computer needs the monitor replaced. Town Administrator Brought replied that the monitor that needs replaced is the front computer. Councilman Chandler suggested one monitor and one computer be replaced at this time. Other council members were in agreement.

Councilman Chandler made a motion to replace one monitor and one computer at Town Hall. Councilwoman Ulrich seconded the motion. All in favor.

## VII. OLD BUSINESS

### A. Kyle Gulbranson – Surface Water Update; Update on The Woodlands Phase I Roads

Mr. Gulbranson informed the Town Council that he and Bob Flowers have been walking the problem areas in the north side of town. He knew what the issues were and walking the sites confirmed that there are a lot of compromised pipes, pipes that are too small, and several areas where it is not conclusive where the pipe actually is. One of the largest problems is that a lot of the drainage ditches in the northern part of the town have been filled over the years due to natural sedimentation and people putting yard waste in them. They pointed out all of the problem areas and Mr. Gulbranson tentatively has the survey work for that part of town scheduled for the second week in October.

Councilman Chandler asked if the money for the surface water grant is simply to study the problem or to actually fix the problem. Mr. Gulbranson replied that unfortunately, the grant is just to study the problem areas and for the survey work. Councilman Chandler asked if there is an idea for what it would actually cost. Mr. Gulbranson stated it will be considerable and they will need to try to find money for that as well.

There is an area outside of the scope of the DNREC grant that he and Mr. Flowers have been watching for the last few months on Cannon Street. At the head of the tax ditch, there is some slumping occurring. Mr. Flowers has been out there to do some excavating on his own. Mr. Gulbranson stated there are some strange things occurring as far as the pipes out there. Last week the Conservation District came out to look at it and they suggested excavating the area around the storm drain. It is believed that the pipe has rusted and has collapsed underneath. They gave an estimate of \$5,228 to excavate that area and replace the pipe.

Councilwoman Ulrich asked if they should get more estimates on this given the high amount. Attorney Witsil replied that they need to obtain competitive bids if the amount is more than \$10,000, but if it is impractical to obtain competition or if there is public exigency as determined by the Town Council, they are exempt from bidding. From all of the information he has, Attorney Witsil believes they are exempt from obtaining bids. Mr. Gulbranson stated the Conservation District has a department specifically for this type of situation, they have all of the supplies on hand, and they don't charge labor so chances are they would not be able to get a better price.

Mayor Baull asked if this is the same location where a sinkhole had been reported and that was confirmed. Councilman Chandler noted that there is flooding in that area. Mr. Gulbranson agreed and stated no water is getting through there and part of the problem is because the compromised section of pipe flows to a catch basin and the catch basin flows to the head of the ditch. The surface level of the ditch is higher than the pipe so no water is getting through that entire system. Part of the proposal from the Conservation District is to clean out that section of the ditch to make it free-flowing.

Councilwoman Ulrich asked if there is any possibility of grant money somewhere that could help with this. Mr. Gulbranson stated that he thinks some similar projects have been funded in the past through the legislators with some of their community transportation funds. Councilman Chandler believes they could get the money through the legislators. He confirmed with Mr. Gulbranson that the Conservation District could be on site and they wouldn't get a better price than that. Mr. Gulbranson agreed that he does not think anybody could beat the price.

Mayor Baull and Councilman Chandler asked Town Administrator Brought if she could contact the legislators about this and she stated she would.

The Conservation District wanted to know if Dagsboro had a location to accept the soils from cleaning out the ditch. Mr. Gulbranson and Mr. Flowers had discussed possibly using some of that fill for the park, to alleviate the water situation there. Mrs. Mach stated they had been in contact with the Conservation District about the erosion over the retaining wall and entering Katie Helm Park and saw them taking pictures of it last week. Mr. Gulbranson agreed it needs to be stabilized.

Moving to The Woodlands, Mr. Gulbranson informed the council that Phase I roads were top coated on August 31<sup>st</sup> and they look great. Mr. Gulbranson asked Mrs. Mach if they have seen improvement with the drainage since the road has been complete. Mrs. Mach replied that she would have to check with the owners at the end of the street, but that she doesn't think they have had much rain since the road has been completed. The same resident that did not state her name earlier, mentioned there is water behind the new homes that just sits and doesn't drain. Mr. Gulbranson replied that there is a catch basin on the side of the road that is higher than the surface of the ground and it will be re-located. When it is re-located, it will be level with the surface around it. Some of the water that is there now, will eventually flow to the catch basin, under the road, and out to the creek.

The same unknown resident stated that when she talked to David Steele, from Fernmoor Homes, he had said after the paving was done, they would do more about the drainage and asked Mr. Gulbranson what that work is. Mr. Gulbranson replied that Section II, the lower end where the retaining basin is, there is still additional storm water pipe that needs to be installed, where the new roadway will go in and that will help the drainage situation as well. She asked how long that will take. From what Mr. Gulbranson understands, they will be moving forward with that phase at the end of the year.

#### VIII. PUBLIC COMMENT

Rick Betlejewski, from The Woodlands, asked if the town has any plans for the traffic on Main Street when the Botanical Gardens open. Mayor Baull replied that is a Del-Dot issue. Mr. Gulbranson doesn't know any details, but that he does know they are doing a study about putting in a light at Iron Branch Road. Visitors to the gardens would have to go down Hudson and come out to Iron Branch Road.

The previous unknown resident mentioned the difficulty of homeowners in The Woodlands getting out onto Main Street and asked Mr. Gulbranson about the possibility of changing the timing in the lights to coordinate better. Mr. Gulbranson replied that would be Del-Dot; he knows the state can change the timing of lights on the major roads, but he is not sure if they would be able to on the local streets.

Jim Thompson, from The Woodlands, asked if the new development will be primarily single family, owner occupied homes or rentals. Mr. Gulbranson replied that based on what has been seen so far, it is single family, owner occupied homes.

Gary Cox, Dagsboro Volunteer Fire Department Treasurer, thanked the Town Council for their support in the bond issue for them to secure a better rate for the loan to better serve the community for the new fire truck. It will be replacing a 1982 truck so they will be able to keep their fleet more reliable and up to date with technology.

IX. ADJOURNMENT

A motion to adjourn the meeting was made by Councilman Chandler and seconded by Councilwoman Ulrich. All in favor. Meeting was adjourned at 7:01 p.m.

Respectfully submitted by;

Megan Thorp  
Town Clerk